

[REDACTED]

Network Rail
Freedom of Information
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19th March 2018

Dear [REDACTED]

Information request
Reference number: FOI2018/00225

Thank you for your request of 19th February 2018, in which you requested the following information:

"Would it be possible for you to answer the following information request under the 2015 Freedom of Information (FOI) Act.

- 1. How many railway viaducts does Network Rail manage in Scotland?*
- 2. How many railway viaducts were repaired or maintained between January 2014 and December 2017?*
- 3. Could you provide copies of the all bat surveys undertaken for each of the railway viaducts maintained or repaired between January 2014 and December 2017."*

I have processed your request under the Environmental Information Regulations 2004 (EIRs) as the information requested falls within the definition of environmental information in regulation 2 of the EIRs. Section 39 of the Freedom of Information Act 2000 (FOIA) exempts environmental information from the FOIA, and requires us to consider it under the EIRs instead.

In responding to your request, I should first explain that there are times when a public authority is allowed to refuse a request for information on the basis that the time spent gathering the information for the request would be so great that it would create a 'disproportionate burden' of work for the organisation. In this case, due to the significant number of documents we would need to review in order to locate all the relevant information, we believe that complying with your request would create such

a burden. The terminology of the Environmental Information Regulations 2004 (EIRs) refers to this as being 'manifestly unreasonable', and sets out that in such cases the obligation to make the information available on request¹ ceases to apply, by virtue of Regulation 12(4)(b).

I will explain below as to the reasons why this is the case along with the public interest test I have conducted; I will also provide advice on how you can narrow your request.

The time required to comply with your request

A request can be unreasonable under the EIRs simply by virtue of the burden that it places on a public authority's resources. I will now explain why this is. In doing so – and in providing examples of the number of relevant records – I will provide responses to questions 1 and 2 of your request.

In conducting preliminary searches for the information you have asked for, we have estimated that we cannot locate, retrieve and extract all the relevant information we may hold within a reasonable time.

To explain this a little further, we have conducted initial searches of our records and can confirm that there 263 viaducts covered by the wording of your request. The records for each viaduct are held electronically; information concerning bat surveys is usually located in the environmental survey documents that are produced prior to undertaking works. We have also confirmed that 358 work items were undertaken on viaducts in Scotland during this period. This includes both intrusive and non-intrusive works at viaducts of all material types.

However, to locate the relevant information for part three of your request, we would then need to check the documents held for each separate structure to determine if it was an environmental survey or a record containing environmental survey information (e.g. this type of information may be included within a Health & Safety File). The number of records we hold for each structure varies; viaducts, being our larger structures, tend to have more records. Every relevant report identified would then have to be reviewed individually to confirm whether it contained bat survey information.

We have undertaken a sample exercise in order to further describe the steps we would need to follow. Our largest viaduct, the Tay Bridge, has 315 associated

¹ Regulation 5(1) of the EIRs confers on public authorities an obligation to make environmental information available on request. See: <http://www.legislation.gov.uk/ukxi/2004/3391/regulation/5/made> for more information.

documents. We were able to review 11 documents in 15 minutes to confirm whether they contained bat surveys. Based on these timings, we believe it would take 7 hours work to complete this review for this structure alone. We also anticipate that at least the same amount of documents would be held for the Forth Bridge.

We then looked at a more typical viaduct at the lower end of the scale; this had 10 document records against it. It took 21 minutes to review these documents; in both the example above and in this case I can advise that no bat surveys were found. Again, due to the numbers of viaducts involved, a review of this scale would create a significant burden; taking the above as either end of the spectrum of viaducts, we estimate that to complete the exercise on all 263 viaducts would take a minimum of 92 hours, and potentially longer. Further work would then be required to review all the relevant information and determine whether it should be disclosed or an exception applies. On this basis, I consider that regulation 12(4)(b) applies to this request.

Regulation 12(4)(b) also requires us to consider the public interest factors for and against disclosure. Network Rail is committed to being an open and transparent organisation that prides itself on supplying information to the general public to aid understanding of our functions, either by proactively publishing on our website or through the means of Freedom of Information/Environmental Information Regulations. However, this commitment also needs to be offset against the amount of time and burden complying with large requests can cause. In the case of this request, the amount of time required for locating and reviewing information would remove members of staff in this business area from carrying out their other day to day responsibilities that are integral to the running of the railway. This would not be in the public interest and, in my opinion, outweighs the public interest in supplying these details in response to this request.

Next Steps

To narrow your request, we would suggest that you focus on a particular location that you are interested in. We will then process this as a new request, locating and retrieving any relevant information and determining whether the information may be disclosed or whether an exemption applies.

If you have any enquiries about this response, please contact me in the first instance at FOI@networkrail.co.uk or on 01908 782405. Details of your appeal rights are below.

Please remember to quote the reference number at the top of this letter in all future communications.

Yours sincerely

Robert Malcolm
Information Officer

Appeal Rights

If you are unhappy with the way your request has been handled and wish to make a complaint or request a review of our decision, please write to the FOI Compliance and Appeals Manager at Network Rail, Freedom of Information, The Quadrant, Elder Gate, Milton Keynes, MK9 1EN, or by email at foi@networkrail.co.uk. Your request must be submitted within 40 working days of receipt of this letter.

If you are not content with the outcome of the internal review, you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire SK9 5AF